

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

DRIVETRAIN, LLC, in its capacity as the Trustee of the
Commonwealth Avoidance Actions Trust,
Plaintiff,

v.

BARCLAYS CAPITAL, INC. *et al.*,
Defendants.

PROMESA
Title III

Case No. 17-BK-3283 (LTS)

(Jointly Administered)

Adv. Proc. No. 19-280 (LTS)

**DEFENDANTS' JOINT NOTICE OF MOTION AND MOTION TO
DISMISS WITH PREJUDICE THE SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in
Support of Defendants' Motion to Dismiss with Prejudice, Supplemental Memorandum of Law

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523- LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

of Citibank, GS Bank, and GS Mitsui in Support of Defendants’ Motion to Dismiss with Prejudice, and the accompanying Declaration of Julie E. Cohen, dated December 29, 2022, with exhibits attached thereto, Defendants Barclays Capital, Inc.; BMO Capital Markets GKST Inc.; BofA Securities, Inc., a/k/a Banc of America Securities LLC, a/k/a BofA Merrill Lynch; Citigroup Global Markets Inc.; Citibank, N.A., New York; Goldman Sachs & Co. LLC; Goldman Sachs Bank USA; Goldman Sachs Mitsui Marine Derivative Products, L.P.; Jefferies LLC; J.P. Morgan Securities LLC; Merrill Lynch Capital Services, Inc.; Morgan Stanley & Co. LLC; Morgan Stanley Capital Services, LLC f/k/a Morgan Stanley Capital Services Inc.; RBC Capital Markets, LLC; Royal Bank of Canada; Samuel A. Ramirez & Co., Inc.; Santander Securities LLC; UBS Financial Services, Inc. of Puerto Rico; and UBS AG (collectively, “Defendants”), hereby move this Court for an order pursuant to Federal Rule of Civil Procedure 12(b)(6), as made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b) dismissing the Second Amended Complaint of Drivetrain, LLC (the “Trustee”), with prejudice, and for such other and further relief as this Court may deem just and proper. A proposed order granting the Motion to Dismiss is attached and marked as **Exhibit A** hereto.

PLEASE TAKE FURTHER NOTICE that in accordance with the requirements of this Court’s Second Amended Standing Order, Case No. 17-03283-LTS, ECF No. 15895-1, counsel for Defendants certify that they have conferred with counsel for the Trustee and attempted to resolve informally the matters raised in the Motion to Dismiss, including with an exchange of letters and a telephonic meet-and-confer. On December 27, the Trustee indicated it would not amend its pleading prior to Defendants’ submitting the Motion to Dismiss.

PLEASE TAKE FURTHER NOTICE that in accordance with the parties’ stipulation, so-ordered by the Honorable Judith Gail Dein on December 15, 2022, any opposition(s) to the

Motion must be filed by April 12, 2023, and any reply or replies must be filed by May 23, 2023.

(ECF No. No. 73.)

PLEASE TAKE FURTHER NOTICE that copies of the Motion to Dismiss and all documents filed in this Title III case are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

Dated: New York, New York
December 29, 2022

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

/s/ Julie E. Cohen

Julie E. Cohen (*Pro Hac Vice*)
Sam Auld (*Pro Hac Vice*)
One Manhattan West
New York, New York 10001-8602
(212) 735-3000
(212) 735-2000
julie.cohen@skadden.com
sam.auld@skadden.com

*Counsel to Morgan Stanley & Co. LLC and
Morgan Stanley Capital Services LLC*

SIMPSON THACHER & BARTLETT LLP

/s/ Jonathan K. Youngwood

Jonathan K. Youngwood (*Pro Hac Vice*)
David Elbaum (*Pro Hac Vice*)
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
(212) 455-2502
jyoungwood@stblaw.com
David.elbaum@stblaw.com

Counsel to J.P. Morgan Securities LLC

SALDAÑA, CARVAJAL & VÉLEZ-RIVÉ,
P.S.C.

/s/ Angel E. Rotger-Sabat

Luis N. Saldaña-Román
USDC-PR No. 208001
Ángel E. Rotger-Sabat
USDC-P.R. No. 208601
166 Avenida de la Constitución
San Juan, Puerto Rico 00901
(787) 289-9250
(787) 289-9253
lsaldana@scvrlaw.com
arotger@scvrlaw.com

*Counsel to Morgan Stanley & Co. LLC and
Morgan Stanley Capital Services LLC*

GOODWIN PROCTER LLP

/s/ Douglas H. Flaum

Douglas H. Flaum (Pro Hac Vice)
Charles A. Brown (Pro Hac Vice)
The New York Times Building
620 Eighth Avenue
New York, NY 10018
(212) 813-8800
(212) 355-3333
dflaum@goodwinlaw.com
cbrown@goodwinlaw.com

*Counsel to Goldman Sachs & Co. LLC,
Goldman Sachs Bank USA, and Goldman
Sachs Mitsui Marine Derivative Products,
L.P.*

ANTONETTI MONTALVO & RAMIREZ-
COLL (AMRC)

/s/ José L. Ramirez-Coll

José L. Ramirez-Coll
USDC-PR No. 221702
P.O. Box 13128
San Juan, Puerto Rico 00908
(787) 977-0312
(787) 977-0323
jramirez@amrclaw.com

Counsel to J.P. Morgan Securities LLC

WINSTON & STRAWN LLP

/s/ Carrie V. Hardman

Carrie V. Hardman (*Pro Hac Vice*)
200 Park Avenue
New York, NY 10166
(212) 294-6700
(212) 294-4700
chardman@winston.com

-and-

Joseph L. Motto (*Pro Hac Vice*)
35 W. Wacker Drive
Chicago, IL 60601
(312) 558-5600
jmotto@winston.com

*Counsel to BofA Securities a/k/a Banc of
America Securities, LLC a/k/a BofA Merrill
Lynch, and Merrill Lynch Capital Services,
Inc.*

MORELL, CARTAGENA & DAPENA LLC

/s/ Ramón E. Dapena
Ramón E. Dapena
USDC PR No. 125005
PO Box 13399
San Juan, PR 00908
787.723.1233
787.723.8763
ramon.dapena@mbcdlaw.com

*Co-Counsel to Goldman Sachs & Co. LLC,
Goldman Sachs Bank USA, and Goldman
Sachs Mitsui Marine Derivative Products,
L.P.*

CROWELL & MORING LLP

/s/ Dan Zelenko
Dan Zelenko (Pro Hac Vice)
Sarah Gilbert (Pro Hac Vice)
590 Madison Avenue, 20th Floor
New York, NY 10022
(212) 223-4000
(212) 223-4134
dzelenko@crowell.com
sgilbert@crowell.com

Counsel to Santander Securities LLC

McGUIRE WOODS LLP

/s/ E. Andrew Southerling
E. Andrew Southerling (*Pro Hac Vice*)
888 16th Street N.W., Suite 500
Washington, DC 20006
(202) 857-1772
(202) 828-3340
asoutherling@mcguirewoods.com
-and-

Aaron G. McCollough (*Pro Hac Vice*)
77 West Wacker Drive, Suite 4100
Chicago, IL 60601-1818
(312) 849-8256
(312) 698-4522
amccollough@mcguirewoods.com

*Counsel to Jefferies LLC and BMO Capital
Markets GKST, Inc.*

McCONNELL VALDÉS LLC

/s/ Antonio A. Arias-Larcada
Antonio A. Arias-Larcada, Esq.
USDC-PR Bar No. 204906
270 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
(787) 250-5064
(787) 759-9225
aaa@mcvpr.com

Counsel to Samuel A. Ramirez & Co., Inc.

NELSON ROBLES-DIAZ LAW OFFICES,
P.S.C.

/s/ Nelson Robles-Díaz

Nelson Robles-Díaz, Esq.
USDCPR NO. 204410
P. O. Box 192302
San Juan, Puerto Rico 00919-2302
(787) 294-9518
(787) 294-9519
nroblesdiaz@gmail.com

Counsel for Santander Securities LLC

KAYSER & REDFERN, LLP

/s/ Leo Kayser III

Leo Kayser III (*Pro Hac Vice*)
515 Madison Avenue
New York, NY 10022
(212) 935-5057
lkayser@515law.com

Counsel to Samuel A. Ramirez & Co., Inc.

GOODWIN PROCTER LLP

/s/ Marshall H. Fishman

Marshall H. Fishman (*Pro Hac Vice*)
Meghan K. Spillane (*Pro Hac Vice*)
The New York Times Building
620 Eighth Avenue
New York, NY 10018
(212) 813-8800
(212) 355-3333
MFishman@goodwinlaw.com
MSpillane@goodwinlaw.com

*Citigroup Global Markets Inc. and Citibank,
N.A.*

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

/s/ Paul J. Lockwood

Paul J. Lockwood (*Pro Hac Vice*)
One Rodney Square
P.O. Box 636
Wilmington, DE 19899
(302) 651-3000
(302) 651-3001
paul.lockwood@skadden.com

*Counsel to UBS AG and UBS Financial
Services Inc. of Puerto Rico*

WEIL GOTSHAL & MANGES LLP

/s/ Robert M. Stern

Robert M. Stern (*pro hac vice*)
2001 M Street, NW
Washington, D.C. 20036
(202) 682-7000
(202) 857-0940
robert.stern@weil.com

*Counsel for RBC Capital Markets, LLC;
Royal Bank of Canada*

NAVARRO-CABRER LAW OFFICES

/s/ Nilda M. Navarro-Cabrer

Nilda M. Navarro-Cabrer
USDC-PR Bar No. 201212
El Centro I, Suite 206
500 Muñoz Rivera Avenue
San Juan, Puerto Rico 00918
(787) 764-9595
(787) 764-7575
navarro@navarrolawpr.com

*Counsel to Jefferies LLC and BMO Capital
Markets GKST, Inc.*

AKIN GUMP STRAUSS HAUER & FELD
LLP

/s/ Joseph L. Sorkin

Joseph L. Sorkin (*pro hac vice*)
One Bryant Park
New York, New York 10036
(212) 872-1000
(212) 872-1001
jsorkin@akingump.com

Counsel to Barclays Capital Inc.

BOBONIS, BOBONIS &
RODRIGUEZ POVENTUD

/s/ Enrique G. Figueroa-Llinás

Enrique G. Figueroa-Llinás
USDC-PR No. 201709
129 De Diego Avenue
San Juan, Puerto Rico 00911-1927
(787) 72579-41

*Counsel to BofA Securities a/k/a
Banc of America Securities, LLC a/k/a
BofA Merrill Lynch, and Merrill Lynch
Capital Services, Inc.*

McCONNELL VALDÉS LLC

/s/ Roberto C. Quiñones-Rivera

Roberto C. Quiñones-Rivera, Esq.
USDC-PR No. 211512
270 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
(787) 250-2631
(787) 759-8282
rcq@mcvpr.com

*Counsel to Barclays Capital Inc., RBC
Capital Markets, LLC, Royal Bank of
Canada, UBS Financial Services Inc. of
Puerto Rico, UBS AG, Citigroup Global
Markets Inc., and Citibank, N.A.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT, on this same date, I electronically filed the foregoing (1) Defendants' Joint Notice of Motion and Motion to Dismiss with Prejudice the Second Amended Complaint, (2) Memorandum of Law in Support of Defendants' Motion to Dismiss with Prejudice, and (3) Declaration of Julie E. Cohen, dated December 29, 2022, with exhibits attached thereto with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Julie E. Cohen
Julie E. Cohen (*Pro Hac Vice*)